

Administrative Law Judge (ALJ) Exhibit 1

DOCKET 04-0371

Attached are several email messages sent by the Administrative Law Judge (ALJ) to parties in this proceeding, and sent by parties to the ALJ and each other. They contain directives and comments by the ALJ respecting procedures, scheduling and case management. They also contain declarations, requests, concerns and comments by the parties. I believe, and therefore rule, that the attached email messages should be included in the formal record of this case, as ALJ Exhibit 1.

Any subsequent email messages of like kind shall also be included in the formal record, pursuant to ruling, at an appropriate time.

David Gilbert  
Administrative Law Judge

**OFFICIAL FILE**

I.C.C. DOCKET NO. 04-0371  
ASJ Exhibit No. 1  
Witness \_\_\_\_\_  
Date 8/18/04 Reporter TR

## **Gilbert, David**

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**From:** Gilbert, David  
**Sent:** Tuesday, July 13, 2004 11:16 AM  
**To:** dfriedman@meyerbrown.com; @ Ortlieb, Mark; @ Anderson, Karl; Harvey, Matthew; Liu, Qin; Lannon, Michael; @ Kinkoph, Doug; Kris.Shulman@xo.com  
**Subject:** 04-0371

To All...Since the case will apparently go forward with all XO & SBC issues, this is to remind you of a directive contained in my email of 6/21/04. Each participant that files a brief must provide a complete statement of its position, including all supporting arguments, on every issue that it contests. As I stated in my previous email, my plan is to "plug in" your statements in my PAD. My intention is not to discourage rhetorical flourish, clever juxtaposition, declamatory fervor or strategic repetition. I will read every word you put in your brief. But, because of the time constraints in this case, I need a complete and portable capsule of your position that I can insert - hopefully, as is - in the PAD.

These statements can be woven into your brief or separately attached. An advance copy (which need not be filed) would be appreciated, but is not required.

So that there is no deviation from this requirement, please understand that no position or supporting argument will be considered if it is not included in the statement.

Thank you,

David Gilbert

**Gilbert, David**

---

**From:** Gilbert, David  
**Sent:** Friday, July 02, 2004 12:10 PM  
**To:** @ Ortlieb, Mark; @ Rhoda, Kevin; dfriedman@meyerbrown.com; @ Anderson, Karl; Harvey, Matthew; Liu, Qin; Lannon, Michael; @ Kinkoph, Doug  
**Cc:** @ Rowland & Moore  
**Subject:** RE: Docket 04-0371

To All...this proposed schedule is satisfactory and will be adopted.

Thanks, David Gilbert, ALJ

-----Original Message-----

From: ORTLIEB, MARK R (Legal) [mailto:mo2753@sbc.com]  
Sent: Friday, July 02, 2004 10:23 AM  
To: Gilbert, David; @ Rhoda, Kevin; dfriedman@meyerbrown.com; ANDERSON, KARL B (Legal); Harvey, Matthew; Liu, Qin; Lannon, Michael; @ Kinkoph, Doug  
Cc: @ Rowland & Moore  
Subject: RE: Docket 04-0371

Judge Gilbert:

SBC Illinois and XO have revised the schedule to address your concerns. The revised proposal is:

SBC Response to Motion to Withdraw:	7/6
XO Reply	7/9
Ruling on Mo.	7/13
if we go forward --	
Initial Briefs:	7/19
Reply Briefs	8/4
Proposed Order	8/13
BOEs	8/20

Assuming a new stipulated start date, nine (9) months from the date of the Negotiation Request Date (as modified) would become September 8, 2004.

Please let us know if this revised schedule is acceptable.

Thank you.

Mark Ortlieb  
General Attorney  
SBC Illinois  
312-727-2415

-----Original Message-----

From: Gilbert, David [mailto:dgilbert@icc.state.il.us]  
Sent: Thursday, July 01, 2004 2:11 PM  
To: ORTLIEB, MARK R (Legal); @ Rhoda, Kevin; dfriedman@meyerbrown.com; ANDERSON, KARL B (Legal); Harvey, Matthew; Liu, Qin; Lannon, Michael; @ Kinkoph, Doug  
Cc: @ Rowland & Moore  
Subject: RE: Docket 04-0371

To All...The proposal to extend the case is acceptable in concept. The

proposed dates will need to be adjusted, however. I will not be in the office during the week of 8/2 and I had hoped to be out during the week of 7/26 as well (though I have been willing to come in on 7/26 & 7/27 if need be). This means that, under your proposed schedule, I would have little time to work with your initial briefs before leaving town.

Accordingly, we can do this one of two ways. Either compress the response/reply time re the XO motion, as well as the time for filing initial briefs (if the case continues), so that I will have those briefs in hand for a longer period before leaving. Or extend the case a bit further, so that your initial briefs would be filed during the week of 8/2 and would be available to me when I return to the office on the morning of 8/9.

Please comment on these options soon. I'm available in the office for a teleconference today if serial emails seem too unwieldy.

David Gilbert, ALJ

-----Original Message-----

From: ORTLIEB, MARK R (Legal) [mailto:mo2753@sbcc.com]  
Sent: Wednesday, June 30, 2004 3:09 PM  
To: Rowland & Moore; dgilbert@icc.state.il.us; dfriedman@meyerbrown.com;  
ANDERSON, KARL B (Legal); mharvey@icc.state.il.us; qliu@icc.state.il.us;  
mlannon@icc.state.il.us; doug.kinkoph@xo.com  
Cc: r&m@telecomreg.com  
Subject: RE: Docket 04-0371

Judge Gilbert:

Set forth below are the dates agreed to between SBC Illinois and XO to extend the schedule to permit the parties to brief XO's Motion to Withdraw. Staff has indicated that it has no problem with an extension of this nature.

SBC Response to Motion to Withdraw:	7/7
XO Reply	7/12
Ruling on Mo.	7/15
if we go forward --	
Initial Briefs:	7/21
Reply Briefs	8/4
Proposed Order	8/13
BOEs	8/20

This adds two weeks to the existing schedule and will probably require XO and SBC Illinois to sign a stipulation to re-set the start date for negotiations, thereby adding two weeks to the time within which this proceeding must be completed. Assuming this is done, nine (9) months from the date of the Negotiation Request Date (as modified) would become September 8, 2004.

Mark Ortlieb  
General Attorney  
SBC Illinois  
312-727-2415

-----Original Message-----

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Mark Ortlieb  
General Attorney  
SBC Illinois  
312-727-2415

-----Original Message-----

From: Rowland & Moore [mailto:krhoda@telecomreg.com]  
Sent: Monday, June 28, 2004 4:23 PM  
To: dgilbert@icc.state.il.us; dfriedman@meyerbrown.com; ORTLIEB, MARK R  
(Legal); ANDERSON, KARL B (Legal); mharvey@icc.state.il.us;  
qliu@icc.state.il.us; mlannon@icc.state.il.us; doug.kinkoph@xo.com;  
Kris.Shulman@allegiancetelecom.com; michael.morris@allegiancetelecom.com  
Cc: r&m@telecomreg.com  
Subject: Docket 04-0371 -- XO's Motion for Expedited Order Holding  
Proceedings in Abeyance Pending Resolution of XO's Motion to Terminate  
Proceedings

All:

Attached please find a copy of XO's Motion for Expedited Order Holding  
Proceedings in Abeyance Pending Resolution of XO's Motion to Terminate  
Proceedings in docket 04-0371. A copy was also filed on e-docket.

Kevin Rhoda  
Rowland & Moore LLP  
(312) 803-1000

## Gilbert, David

---

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**Cc:** r@m@telecomreg.com  
**Subject:** Docket 04-0371 -- XO's Motion for Expedited Order Holding Proceedings in Abeyance Pending Resolution of XO's Motion to Terminate Proceedings

All:

Attached please find a copy of XO's Motion for Expedited Order Holding Proceedings in Abeyance Pending Resolution of XO's Motion to Terminate Proceedings in docket 04-0371. A copy was also filed on e-docket.

Kevin Rhoda

**Gilbert, David**

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Cc: r&m@telecomreg.com  
Subject: Docket 04-0371 -- XO's Motion for Expedited Order Holding Proceedings in Abeyance Pending Resolution of XO's Motion to Terminate Proceedings

All:

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Kevin Rhoda  
Rowland & Moore LLP  
(312) 803-1000

**Gilbert, David**

---

**From:** Gilbert, David  
**Sent:** Wednesday, June 23, 2004 4:30 PM  
**To:** @ 04-0371 Filings  
**Cc:** Zolnierek, Jim; Liu, Qin  
**Subject:** 04-0371

TO ALL...attached is an unofficial version of the ALJ's ruling on XO's response to the previous ALJ's ruling and on XO's dismissal/strike motion. I'm sending this now to facilitate preparation of your briefs. The Clerk will probably serve the official version sometime tomorrow. The text will be the same.

David Gilbert, ALJ



040371aljRul2.doc

## Gilbert, David

---

**From:** Gilbert, David  
**Sent:** Monday, June 21, 2004 11:28 AM  
**To:** @ Ortlieb, Mark; Harvey, Matthew; @ 04-0371 Filings  
**Cc:** Zolnierrek, Jim; Liu, Qin  
**Subject:** FW: 04 - 0371

To All...I just had a teleconference with Mark Ortlieb and Steve Moore regarding scheduling. They represented that Matt Harvey had no objection to their proposed revision for the schedule in this case. I will adopt their proposed revision. Therefore, the schedule is:

7/2 - initial briefs  
7/13 - reply briefs  
7/26 - PAD  
8/6 - exceptions

Additionally, I asked Mr. Moore and Mr. Ortlieb to prepare comprehensive summaries of their respective positions on each contested issue in the case. My hope is to literally plug these position summaries into the PAD, so that I can devote the bulk of my time to making and explaining my proposed rulings on the issues. I would like Staff to do this as well. If these summaries can be sent to me in advance of the due date for your briefs, that would be very helpful. If that occurs, no separate filing with the Clerk is necessary, since the text will appear in your briefs anyway.

I thank Mr. Ortlieb and Mr. Moore for their constructive contribution to scheduling.

Finally, please note that I will compile the email that I have exchanged with the parties into a single ALJ's exhibit, which I will add to the record after a final order is issued.

David Gilbert, ALJ

-----Original Message-----

**From:** Gilbert, David  
**Sent:** Friday, June 18, 2004 4:12 PM  
**To:** @ Ortlieb, Mark; Harvey, Matthew; @ 04-0371 Filings  
**Cc:** Zolnierrek, Jim; Liu, Qin  
**Subject:** RE: 04 - 0371

To All...Leaving the schedule in place gives the parties 11 more calendar days & 7 more business days (starting from tomorrow) to write initial briefs for which the parties have only 10 days (including a holiday) in the present schedule. Since everyone has been relieved of the need to prepare for, conduct and review hearings, there is now additional time for everyone to adjust existing schedules. If SBC wants to propose a different revision, feel free. The schedule will not remain as is, however. (The 8/6 date for exceptions should remain as is because I won't be available to ready filings anyway during that week.) DG

-----Original Message-----

**From:** ORTLIEB, MARK R (Legal) [mailto:mo2753@sbcc.com]  
**Sent:** Friday, June 18, 2004 2:56 PM  
**To:** Gilbert, David; Harvey, Matthew; @ 04-0371 Filings  
**Cc:** Zolnierrek, Jim; Liu, Qin  
**Subject:** RE: 04 - 0371

Dear ALJ Gilbert:

SBC Illinois has relied upon the existing schedule and has planned its work accordingly. As you can imagine, there is an extraordinary amount of work associated with the recent developments in the industry. The XO arbitration is only one of several matters that SBC attorneys and policy personnel are responsible for in the coming weeks. We have developed

internal, multi-state schedules based on your existing scheduling order in this case. For that reason, we would request that the existing schedule be maintained and that we be given the opportunity to address any change in schedule in more detail. We would be prepared to have such discussions in person or over the telephone anytime, as soon as Monday, June 21.

Thank you for your consideration of this matter.

Mark Ortlieb  
SBC Illinois

-----Original Message-----

From: Gilbert, David [mailto:dgilbert@icc.state.il.us]  
Sent: Friday, June 18, 2004 2:43 PM  
To: Harvey, Matthew; @ 04-0371 Filings  
Cc: Zolnierrek, Jim; Liu, Qin  
Subject: RE: 04 - 0371

To All:

In view of Staff's declaration, two of the previously scheduled procedural milestones in this proceeding are no longer needed. That is, XO and SBC will not file responses to Staff on 6/25, and there will be evidentiary hearings on 6/29. I propose using the additional time to revise the remaining schedule as follows:

7/1 - initial briefs  
7/9 - reply briefs  
7/26 - PAD  
8/6 - exceptions

Unless I receive a compelling argument for altering this schedule, it will govern the case going forward. Note that I don't have much flexibility because of my vacation, which will occupy the week of 8/2-6 and most of the week of 7/26-29. Indeed, I hope to have the PAD done by 7/23, but reserved 7/26 as a fall-back.

David Gilbert, ALJ

> -----Original Message-----

> From: Harvey, Matthew  
> Sent: Friday, June 18, 2004 10:54 AM  
> To: @ 04-0371 Filings  
> Cc: Zolnierrek, Jim; Liu, Qin  
> Subject: 04 - 0371

>

> To all-

> The Staff hereby advises the ALJ and parties that it has elected not  
> to file verified statements in the above-referenced proceeding. That said,  
> the Staff intends to participate actively in the proceeding, and reserves  
> its right to file briefs and such other pleadings as it deems necessary.  
> Thanks. -MLH

>

> Matthew L. Harvey  
> Office of the General Counsel  
> Illinois Commerce Commission  
> 160 N. La Salle Street, Suite C-800  
> Chicago, Illinois 60601-3104  
> voice 312 / 793-3243  
> fax 312 / 793-1556

> v/tty 312 / 814-5845

>

> This message and any attachments to it contain PRIVILEGED  
> AND CONFIDENTIAL ATTORNEY CLIENT INFORMATION AND/OR ATTORNEY WORK PRODUCT  
> exclusively for intended recipients. Please DO NOT FORWARD OR DISTRIBUTE  
> to anyone else. If you have received this e-mail in error, please call me  
> at (312) 793-2877 to report the error and then delete this message from  
> your system.

>

>

## Gilbert, David

---

**From:** Gilbert, David  
**Sent:** Thursday, June 17, 2004 10:47 AM  
**To:** @ Moore, Stephen; Gilbert, David; Harvey, Matthew; @ Ortlieb, Mark; 'Friedman, Dennis G.'; 'Potkul, Karen'; Lannon, Michael; @ Kinkoph, Doug; @ Anderson, Karl; @ Rowland, Thomas; Zolnierrek, Jim; Liu, Qin  
**Cc:** 'Kris.Shulman@allegiancetelecom.com'; @ Rowland & Moore  
**Subject:** RE: 04-0371

Obviously, I didn't address this, so no assumptions are warranted. In any event, your reply can be filed by COB on Monday, 6/21. This ruling is intended to change nothing in the remaining schedule. David Gilbert, ALJ

-----Original Message-----

From: Steve Moore [mailto:steve@telecomreg.com]  
Sent: Thursday, June 17, 2004 9:11 AM  
To: Gilbert, David; Harvey, Matthew; @ Ortlieb, Mark; 'Friedman, Dennis G.'; 'Potkul, Karen'; Lannon, Michael; @ Kinkoph, Doug; @ Anderson, Karl; @ Rowland, Thomas; Zolnierrek, Jim; Liu, Qin  
Cc: 'Kris.Shulman@allegiancetelecom.com'; @ Rowland & Moore  
Subject: RE: 04-0371

Judge Gilbert:

The June 9th order setting the schedule for briefing of XO's Motion to Dismiss SBC Issues gave XO three days to file a reply. I assume that XO now has 3 business days from the new SBC filing date of June 16 - which would make its Reply due on Monday, June 21. If you prefer Friday, June 18, please let me know as soon as possible.

Steve Moore

At 02:04 PM 6/11/2004, Gilbert, David wrote:

>TO ALL:

>  
> In view of Staff's declaration, the requests of SBC and XO for  
>additional time for the filings identified in this email string are granted.  
>

>David Gilbert, ALJ

>-----Original Message-----

>From: Harvey, Matthew  
>Sent: Friday, June 11, 2004 1:54 PM  
>To: Gilbert, David; @ Moore, Stephen; @ Ortlieb, Mark; 'Friedman, Dennis G.'; 'Potkul, Karen'; Lannon, Michael; @ Kinkoph, Doug; @ Anderson, Karl; @ Rowland, Thomas; Zolnierrek, Jim; Liu, Qin  
>Cc: 'Kris.Shulman@allegiancetelecom.com'; @ Rowland & Moore  
>Subject: RE: 04-0371

>Staff does not object to this proposal. -MLH

>-----Original Message-----

>From: Gilbert, David  
>Sent: Friday, June 11, 2004 11:23 AM  
>To: @ Moore, Stephen; @ Ortlieb, Mark; Friedman, Dennis G.; Potkul, Karen; Harvey, Matthew; Lannon, Michael; @ Kinkoph, Doug; @ Anderson, Karl; @ Rowland, Thomas; Zolnierrek, Jim; Liu, Qin  
>Cc: Kris.Shulman@allegiancetelecom.com; @ Rowland & Moore  
>Subject: RE: 04-0371

>  
>  
>  
>TO ALL...In view of the declarations by SBC and XO that they will not  
>request evidentiary hearings with respect to SBC's filing, and given SBC's  
>declaration that it will not file verified statements, there now may be  
>sufficient time in the schedule to accommodate the requests of XO and SBC  
>for additional time to file, respectively, XO's reply to SBC's response to  
>the petition, and SBC's response to XO's dismissal motion.  
>  
>That said, please understand the following...First, there are still 4  
>filings to go (XO's response to SBC, Staff's case, XO's & SBC's responses to  
>Staff). There has also been some hedging of bets regarding waiver of  
>hearings. Accordingly, and in view of my clear and repeated concern that  
>this case remain on schedule, I will construe existing waivers very  
>strictly. That means, at a minimum, that nothing filed to date by any party  
>will be addressed in evidentiary hearings. Moreover, with regard to  
>subsequent filings, where your existing hearing waivers can be applied, they  
>will be applied.  
>  
>Second, by accommodating SBC and XO, Staff will have shorter preparation  
>intervals for its filings. Staff will have less time to review XO's next  
>filing, and may not know which SBC issues have survived XO's dismissal  
>motion, before making its own filing on 6/18. Accordingly, I will not grant  
>SBC or XO more time until 3:30pm today, or until such earlier time as Staff  
>indicates it has no objection.  
>  
>Absent Staff objection, I will grant SBC's request for leave to file on or  
>before 6/16 and XO's request to file on or before 6/15. Note that it may be  
>too late for formal notice from the Clerk, but I will email, and formal  
>notice will follow next week.  
>  
>David Gilbert, ALJ  
>  
>-----Original Message-----  
>From: Steve Moore [mailto:steve@telecomreg.com]  
>Sent: Thursday, June 10, 2004 5:08 PM  
>To: Gilbert, David; Ortlieb, Mark; Friedman, Dennis G.; Potkul, Karen;  
>Harvey, Matthew; Lannon, Michael; Kinkoph, Doug; ANDERSON, KARL B ;  
>Rowland, Tom; Zolnierrek, Jim; Liu, Qin  
>Cc: Kris.Shulman@allegiancetelecom.com; r&m@telecomreg.com  
>Subject: RE: 04-0371  
>  
>  
>Judge Gilbert:  
>  
>XO will not request evidentiary hearings based on what SBC has filed as of  
>this date. It is our understanding that SBC will also not request  
>evidentiary hearings based on XO's current filings. I have spoken to Matt  
>Harvey and he informs me that while Staff may file testimony, it will be  
>limited in scope. Upon viewing that testimony, SBC and XO will have to  
>determine if they wish to request hearings. Thus, no one can state for  
>certain that there will not be hearings in this case. All would probably  
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>Steve Moore  
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>At 02:03 PM 6/10/2004, Gilbert, David wrote:

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>>TO ALL: I'm puzzled. I requested yesterday, and confirmed today, that the  
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>>David Gilbert, ALJ  
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>>-----Original Message-----  
>>From: Steve Moore [mailto:steve@telecomreg.com]  
>>Sent: Thursday, June 10, 2004 12:27 PM  
>>To: ORTLIEB, MARK R (Legal); Gilbert, David; Friedman, Dennis G.;  
>>Potkul, Karen; Harvey, Matthew; Lannon, Michael; Doug"  
>><doug.kinkoph@xo.com>, "ANDERSON; KARL B " <kal873@sbc.com>, "Rowland;  
>>Tom" <tom@telecomreg.com>, "Zolnierek; Jim" <jzolnier@icc.state.il.us>,  
>>"Liu; Qin" <qliu@icc.state.il.us>  
>>Subject: RE: 04-0371  
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> >Steve Moore

## **Gilbert, David**

---

**From:** Gilbert, David  
**Sent:** Friday, June 11, 2004 2:05 PM  
**To:** Harvey, Matthew; @ Moore, Stephen; @ Ortlieb, Mark; 'Friedman, Dennis G.'; 'Potkul, Karen'; Lannon, Michael; @ Kinkoph, Doug; @ Anderson, Karl; @ Rowland, Thomas; Zolnierrek, Jim; Liu, Qin  
**Cc:** 'Kris.Shulman@allegiancetelecom.com'; @ Rowland & Moore  
**Subject:** RE: 04-0371

TO ALL:

In view of Staff's declaration, the requests of SBC and XO for additional time for the filings identified in this email string are granted.

David Gilbert, ALJ

-----Original Message-----

**From:** Harvey, Matthew  
**Sent:** Friday, June 11, 2004 1:54 PM  
**To:** Gilbert, David; @ Moore, Stephen; @ Ortlieb, Mark; 'Friedman, Dennis G.'; 'Potkul, Karen'; Lannon, Michael; @ Kinkoph, Doug; @ Anderson, Karl; @ Rowland, Thomas; Zolnierrek, Jim; Liu, Qin  
**Cc:** 'Kris.Shulman@allegiancetelecom.com'; @ Rowland & Moore  
**Subject:** RE: 04-0371

Staff does not object to this proposal. -MLH

-----Original Message-----

**From:** Gilbert, David  
**Sent:** Friday, June 11, 2004 11:23 AM  
**To:** @ Moore, Stephen; @ Ortlieb, Mark; Friedman, Dennis G.; Potkul, Karen; Harvey, Matthew; Lannon, Michael; @ Kinkoph, Doug; @ Anderson, Karl; @ Rowland, Thomas; Zolnierrek, Jim; Liu, Qin  
**Cc:** Kris.Shulman@allegiancetelecom.com; @ Rowland & Moore  
**Subject:** RE: 04-0371

TO ALL...In view of the declarations by SBC and XO that they will not request evidentiary hearings with respect to SBC's filing, and given SBC's declaration that it will not file verified statements, there now may be sufficient time in the schedule to accommodate the requests of XO and SBC for additional time to file, respectively, XO's reply to SBC's response to the petition, and SBC's response to XO's dismissal motion.

That said, please understand the following...First, there are still 4 filings to go (XO's response to SBC, Staff's case, XO's & SBC's responses to Staff). There has also been some hedging of bets regarding waiver of hearings. Accordingly, and in view of my clear and repeated concern that this case remain on schedule, I will construe existing waivers very strictly. That means, at a minimum, that nothing filed to date by any party will be addressed in evidentiary hearings. Moreover, with regard to subsequent filings, where your existing hearing waivers can be applied, they will be applied.

Second, by accommodating SBC and XO, Staff will have shorter preparation intervals for its filings. Staff will have less time to review XO's next filing, and may not know which SBC issues have survived XO's dismissal motion, before making its own filing on 6/18. Accordingly, I will not grant SBC or XO more time until 3:30pm today, or until such earlier time as Staff indicates it has no objection.

Absent Staff objection, I will grant SBC's request for leave to file on or before 6/16 and XO's request to file on or before 6/15. Note that it may be too late for formal notice from the Clerk, but I will email, and formal notice will follow next week.

David Gilbert, ALJ

-----Original Message-----

From: Steve Moore [mailto:steve@telecomreg.com]  
Sent: Thursday, June 10, 2004 5:08 PM  
To: Gilbert, David; Ortlieb, Mark; Friedman, Dennis G.; Potkul, Karen;  
Harvey, Matthew; Lannon, Michael; Kinkoph, Doug; ANDERSON, KARL B ;  
Rowland, Tom; Zolnierrek, Jim; Liu, Qin  
Cc: Kris.Shulman@allegiancetelecom.com; r&m@telecomreg.com  
Subject: RE: 04-0371

Judge Gilbert:

XO will not request evidentiary hearings based on what SBC has filed as of this date. It is our understanding that SBC will also not request evidentiary hearings based on XO's current filings. I have spoken to Matt Harvey and he informs me that while Staff may file testimony, it will be limited in scope. Upon viewing that testimony, SBC and XO will have to determine if they wish to request hearings. Thus, no one can state for certain that there will not be hearings in this case. All would probably agree that such hearings will be short.

In any event, Matt informed me that given the fact that Staff expects to file a limited amount of testimony, he would not anticipate the need for a delay in the Staff filing date in the event that XO files its response to SBC's new issues next Tuesday instead of tomorrow.

Finally, XO does not object to SBC's request for additional time to respond to the Motion to Dismiss of XO because a delay in ruling on that motion should not affect the remaining schedule in this proceeding.

Steve Moore

At 02:03 PM 6/10/2004, Gilbert, David wrote:

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>Sent: Thursday, June 10, 2004 12:27 PM  
>To: ORTLIEB, MARK R (Legal); Gilbert, David; Friedman, Dennis G.;  
>Potkul, Karen; Harvey, Matthew; Lannon, Michael; Doug"  
><doug.kinkoph@xo.com>, "ANDERSON; KARL B " <ka1873@sbc.com>, "Rowland;  
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>this delay will impair the ability of the Commission to issue a timely  
>order. I have spoken to counsel for SBC and the Staff and neither has an  
>objection to XO filing its response on June 15.  
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>Please let me know if you need a formal motion for this request.  
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>Steve Moore

## Gilbert, David

---

**From:** Gilbert, David  
**Sent:** Thursday, June 10, 2004 2:04 PM  
**To:** @ Moore, Stephen; @ Ortlieb, Mark; Friedman, Dennis G.; Potkul, Karen; Harvey, Matthew; Lannon, Michael; Doug" <doug.kinkoph@xo.com>, "ANDERSON; KARL B " <ka1873@sbc.com>, "Rowland; Tom" <tom@telecomreg.com>, "Zolnierrek; Jim" <jzolnier@icc.state.il.us>, "Liu; Qin" <qliu@icc.state.il.us>  
**Subject:** RE: 04-0371

TO ALL: I'm puzzled. I requested yesterday, and confirmed today, that the parties declare whether they were requesting evidentiary hearings regarding SBC's issues. At present, only Staff has responded, and Staff has not waived hearing. Accordingly, the presently scheduled evidentiary hearing remains on our schedule.

Nevertheless, I am now presented with two informal requests, which, if granted, would push the remaining filing schedule in this case into conflict with the present date for evidentiary hearings (as well as affecting the available preparation time for remaining scheduled filings).

XO and SBC must understand the following: the schedule in this proceeding cannot be altered to accommodate your obligations in other states. Nor can the forward-looking schedule be revised to mirror prior time intervals (and, as an aside, I have no idea how SBC calculates the purported 17-days response time asserted in Mr. Friedman's email). This case has a clear time limit that must be observed, and there is only so much time remaining.

All parties must understand the following: as my ruling stated, this case is about disputed issues concerning incorporation of the TRO into the existing ICA. Evidentiary hearings are for addressing disputed issues of fact. The parties have already agreed to waive hearing on XO's issues. SBC's issues appear cut from the same cloth. While I will firmly protect any party's wish to have factual issues illuminated by the live hearing process, legal and policy arguments should be addressed in written filings (and, if appropriate, oral argument).

If the parties wish to extend the intervals in our schedule for written filings, feel free to explore ways of shortening or eliminating the time allocated for live hearings.

David Gilbert, ALJ

-----Original Message-----

From: Steve Moore [mailto:steve@telecomreg.com]  
Sent: Thursday, June 10, 2004 12:27 PM  
To: ORTLIEB, MARK R (Legal); Gilbert, David; Friedman, Dennis G.; Potkul, Karen; Harvey, Matthew; Lannon, Michael; Doug" <doug.kinkoph@xo.com>, "ANDERSON; KARL B " <ka1873@sbc.com>, "Rowland; Tom" <tom@telecomreg.com>, "Zolnierrek; Jim" <jzolnier@icc.state.il.us>, "Liu; Qin" <qliu@icc.state.il.us>  
Subject: RE: 04-0371

Dear Judge Gilbert:

Under the schedule in this proceeding, XO is due to file its response to the new issues raised by SBC on Friday, June 11. That schedule had anticipated that SBC would have filed its Verified Statement raising new issues on May 28th. In fact, that statement was not served on the parties until June 1. Given that four day delay, XO is requesting that it be able to file its response four days later - June 15. That delay will also allow XO to coordinate similar responses to SBC's new issues raised in other states in which XO has initiated arbitration proceedings. Given the unlikely need for hearings in this proceeding, XO does not believe that this delay will impair the ability of the Commission to issue a timely

order. I have spoken to counsel for SBC and the Staff and neither has an objection to XO filing its response on June 15.

Please let me know if you need a formal motion for this request.

Steve Moore

## Gilbert, David

---

**From:** ORTLIEB, MARK R (Legal) [mo2753@sbc.com]  
**Sent:** Thursday, June 10, 2004 11:08 AM  
**To:** Gilbert, David; Friedman, Dennis G.; karen.potkul@xo.com; Harvey, Matthew; @ Kinkoph, Doug; ANDERSON, KARL B (Legal); @ Moore, Stephen; tom@telecomreg.com  
**Cc:** @ Germann, Hans  
**Subject:** RE: 04-0371

Dear Judge Gilbert:

In response to your notice below, please be advised that SBC Illinois re-affirms its position that no evidentiary hearings are required in this docket. In our May 21, 2004 Response to XO's Motion For Waiver Or Variance, we stated that we do not object to XO's Motion to dispense with prefiled testimony, discovery and evidentiary hearings.

In addition, SBC Illinois does not at this time intend to file verified statements.

Please contact me if SBC Illinois needs to provide further clarification on this matter.

Mark Ortlieb  
312-727-2415

-----Original Message-----

**From:** Gilbert, David [mailto:dgilbert@icc.state.il.us]  
**Sent:** Thursday, June 10, 2004 10:33 AM  
**To:** 'Friedman, Dennis G.'; ORTLIEB, MARK R (Legal); karen.potkul@xo.com; Harvey, Matthew; @ Kinkoph, Doug; ANDERSON, KARL B (Legal); @ Moore, Stephen  
**Cc:** @ Germann, Hans  
**Subject:** RE: 04-0371

To All: I can't constructively assess this request, or schedule any opportunity to respond to it, until I know whether time for evidentiary hearings on SBC'S issues must still be allotted in our overall schedule. Moreover, I must be mindful that additional verified statements have yet to be filed. I look forward to receiving your declarations concerning hearings at mid-day today. DG

-----Original Message-----

**From:** Friedman, Dennis G. [mailto:DFriedman@mayerbrownrowe.com]  
**Sent:** Thursday, June 10, 2004 8:44 AM  
**To:** Gilbert, David; @ Ortlieb, Mark; karen.potkul@xo.com; Harvey, Matthew; @ Kinkoph, Doug; @ Anderson, Karl; @ Moore, Stephen  
**Cc:** Germann, Hans  
**Subject:** RE: 04-0371

SBC respectfully requests to Wednesday, 6/16 to respond to XO's motion to strike, and states:

1. XO was allowed 17 days to respond to SBC's motion to dismiss -- a roughly comparable motion (and one on which SBC had requested expedited briefing). SBC requests seven days to respond to XO's motion.

2. XO filed in California the day before yesterday the same motion to strike that it filed yesterday in Illinois - and the California ALJ set 6/16 for SBC's response. SBC asks that its response



to XO's later-filed Illinois motion not be due earlier than its response to the California motion.

3. XO's motion is not terribly time-sensitive -- certainly not as time-sensitive as SBC's motion to dismiss). The motion to dismiss was time-sensitive because it presented the possibility that the proceeding might have to re-commence in a new docket, but with the same end date. All that depends on XO's motion to strike, on the other hand, is what issues the parties will brief.

Thank you for your consideration.

-----Original Message-----

From: Gilbert, David [mailto:dgilbert@icc.state.il.us]  
Sent: Wednesday, June 09, 2004 3:20 PM  
To: @ Ortlieb, Mark; karen.potkul@xo.com; Harvey, Matthew; Friedman, Dennis G.; @ Kinkoph, Doug; @ Anderson, Karl; @ Moore, Stephen  
Subject: 04-0371

To All: 2 SUBJECTS

1) SBC and Staff have until COB in Monday, 6/14 to respond to XO's Motion to Dismiss SBC's arbitration issues. XO will have until COB on Thursday, 6/17 to Reply. I'll ask the Clerk to serve a formal ruling on this, but I wanted to give you immediate notice via this email.

2) I'm gathering that neither carrier is requesting an evidentiary hearing on SBC's issues. Please confirm or correct my impression on this point. If no hearing will occur, I want to reschedule the remaining procedural milestones in the case to reflect the absence of hearings. Please comment by noon tomorrow, 6/10. In any case, we'll have a status hearing (or teleconference) to either re-work the schedule or focus whatever evidentiary hearing will take place.

David Gilbert, ALJ

**Gilbert, David**

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